TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-09-00606-CR

Eric Daniel Loper, Appellant

v.

The State of Texas, Appellee

FROM COUNTY COURT AT LAW NO. 2 OF WILLIAMSON COUNTY
NO. 08-03235-2, HONORABLE TIMOTHY L. WRIGHT, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

PER CURIAM

Eric Daniel Loper, proceeding without counsel, filed a notice of appeal from his conviction and sentence for driving while intoxicated. His brief was originally due May 12, 2010. On July 2, 2010, this Court's clerk sent a letter to his address in jail informing him that his brief was overdue. The letter was returned with a notation that Loper had been released from jail. This Court's clerk next inquired by telephone with Loper's retained trial court counsel who had been permitted to withdraw after the conviction and sentence were imposed. Counsel stated that he would attempt to contact Loper and provided cellular telephone numbers for Loper and Loper's father. This Court's clerk called the telephone numbers. A message on Loper's father's telephone number reported that the telephone was no longer in service. Three calls to Loper's cellular telephone number were met with messages that the party was unavailable and a directive to try again later.

The appeal is abated. The trial court shall conduct a hearing to determine whether appellant desires to prosecute this appeal and, if so, whether appellant is indigent and entitled to have counsel appointed for him or whether appellant is not indigent and has not made the necessary arrangements for filing a brief. Tex. R. App. P. 38.8(b). The court shall make appropriate findings and recommendations. A record from this hearing, including copies of all findings and orders and a transcription of the court reporter's notes, shall be forwarded to the clerk of this Court for filing as a supplemental record no later than April 27, 2011. *See* Tex. R. App. P. 38.8(b)(3).

Before Justices Puryear, Pemberton and Rose

Abated

Filed: March 25, 2011

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